IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 484 OF 2005

Bhagwandas T. Vakani & Anr ...Applicants

Versus

State of Maharashtra & Anr ...Respondents

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Mr. D. Brijesh i/b M/s. A.S.Khandeparkar, Advocate for Applicants.

Mr. S.R. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 23RD AUGUST, 2005

P. C.:-

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State.

2. The applicants have prayed for quashing of proceedings relating to Criminal Case No.653/S/2003 which is pending in the Court of learned Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai. In the said case, process has been issued against the applicants under Section 138 of Negotiable Instruments Act. The learned advocate for the applicants submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. If the process issued against the applicants

is set aside, the proceedings in respect of the applicants would come to an end.

3. The applicants had preferred an application before the learned Magistrate for recalling of process. The learned Magistrate observed that in view of the decision in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. reported in (2004) 7 SCC 338**, he had no power to recall the process and hence, he rejected the said application. In view of the decision of the Supreme Court in the case of Adalat Prasad (supra), it is clear that the Magistrate has no power to recall the process, hence, no fault can be found with the order of the learned Magistrate rejecting the application for recall of process.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, the applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the applicants prefer revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the applicants to prefer

revision before the concerned Sessions Court. The learned advocate for the applicants states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, ad interim relief granted by this Court shall stand extended for a period of four weeks from today. It is made clear that the revision shall be preferred in respect of the order of Magistrate issuing process and not in respect of the order of the Magistrate rejecting the application for recall of process.

6. On the necessary revision being preferred by the applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

7. Application is disposed of.

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